Lein Tiam Hock v Arumugam a/l Kandasamy

HIGH COURT (MELAKA) — CIVIL APPEAL NO 12–13 OF 1998
SURIYADI J
16 JUNE 1999

Civil Procedure *— Appeal — Appeal to High Court — Amount in dispute or value of subject matter did not exceed RM10,000 — No question of law to be resolved — What amounts to disputed sum — Whether judgment sum or amount claimed — Whether appeal should be entertained — Courts of Judicature Act 1964 s 28*

The plaintiff was awarded the sum of RM9,150 by the sessions court. The original claim was RM27,000. The defendant filed a notice of appeal against the judgment on liability and quantum. The plaintiff raised a preliminary objection that since the amount in dispute or the value of the subject matter did not exceed RM10,000 nor was there any question of law to be resolved by the court, the appeal should not be entertained by virtue of s 28 of the Courts of Judicature Act 1964 ('the CJA'). The defendant submitted that the court should not view the judgment sum to be the disputed amount but the amount claim by the plaintiff, ie RM27,000.

Held, allowing the preliminary objection:

(1) The amount in dispute or the subject matter provided for under s 28 of the CJA must relate to the decision of the subordinate court and not to any sum claimed either by the plaintiff or the combined sum of the claim and counterclaim submitted by the defendant, if any. Apart from attaching weight or significance to the term 'decision', the provision of s 28 must also be read as a whole. It is beyond denial that s 28 does not have the terms 'claim' or 'suit' (see pp 133H–134A).

(2) As gauged from the notice of appeal, the matter under appeal was limited to the issue of liability and quantum. Since the disputed amount or value of the subject-matter is not over RM10,000, the notice was procedurally flawed because it was silent as to the question of law to be resolved (see p 131I–132A).

[Bahasa Malaysia summary

Plaintif telah diberikan award berjumlah RM9,150 oleh mahkamah sesyen. Tuntutan asal adalah RM27,000. Defendan memfailkan suatu notis rayuan terhadap penghakiman atas liabiliti dan kuantum. Plaintif membangkitkan suatu bantahan awal bahawa memandangkan jumlah yang dipertikaikan atau nilai perkara subjek tidak melebihi RM10,000 dan tiada apa-apa persoalan undang-undang untuk diputuskan oleh mahkamah, rayuan tersebut tidak seharusnya dilayan memandangkan peruntukkan s 28 Akta Mahkamah Kehakiman 1964 ('AMK tersebut'). Defendan menghujahkan bahawa mahkamah tidak seharusnya menganggap jumlah penghakiman sebagai jumlah yang

dipertikaikan tetapi jumlah yang dituntut oleh plaintif, iaitu RM27,000. A

Diputuskan, membenarkan bantahan awal:

(1) Jumlah yang dipertikaikan atau perkara subjek yang diperuntukkan di bawah s 28 AMK tersebut mesti berkaitan dengan keputusan mahkamah rendah dan bukan kepada apa-apa jumlah yang dituntut sama ada oleh plaintif atau gabungan jumlah yang dituntut dan tuntutan balas yang dihujahkan oleh defendan, jika ada. Selain daripada meletakkan beratnya atau kepentingan kepada terma 'keputusan', peruntukan s 28 mesti juga dibaca secara keseluruhannya. Adalah tidak dapat dinafikan bahawa s 28 tidak mempunyai terma-terma 'tuntutan' atau 'guaman' (lihat ms 133H–134A). B C

(2) Sebagaimana yang diukur daripada notis rayuan, perkara di bawah rayuan adalah terhad kepada isu liabiliti dan kuantum. Memandangkan jumlah atau nilai perkara subjek adalah tidak melebihi RM10,000, notis tersebut adalah cacat dari segi prosedur kerana ia tidak menyatakan apa-apa berkenaan dengan persoalan undang-undang untuk diputuskan (lihat ms 131I–132A).] D

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Notes

For cases on appeal to High Court, see 2(1) *Mallal's Digest* (4th Ed, 1998 Reissue) paras 424–431.

Cases referred to F

Allan & Ors v Pratt (1888) 13 App Cas 780 (refd)

Amer Mohideen Dawood v Sneh Bhar w/o Ter Binder Singh [1996] 2 MLJ 329 (refd)

Brett v Thrower [1945] 2 All ER 284 (refd)

Chan Kee Beng v Ramasamy Naidu [1939] MLJ 113 (refd) G

Meghji Lakhamshi & Brothers v Furniture Workshop [1954] AC 81 (refd)

Mohamad Safuan bin Wasidin & Anor v Mohd Ridhuan bin Ahmad (an infant) [1994] 2 MLJ 187 (refd)

Monohary Teresa & Anor v Tan Ah Lek [1995] 3 MLJ 365 (refd)

Smith v Gill [1896] 2 QB 166 (refd) H

Sulaiman bin Mohamad v Malayan Banking Bhd [1992] 2 MLJ 116 (refd)

Tan Weng Chiang v PP [1992] 2 MLJ 625 (refd)

Yai Yen Hon v Teng Ah Kok & Sim Huat Sdn Bhd & Anor [1997] 1 MLJ 136 (refd) I

Zain Azahari bin Zainal Abidin lwn Wearne Brothers (1983) Sdn Bhd [1997] 5 MLJ 39 (refd)

Legislation referred to

County Courts Act 1934 [Eng] s 105
Courts Enactment 1918 s 17
Courts of Judicature Act 1964 ss 28, 68, (1)(a)

Raghbir Singh (*Raghbir Singh Gill & Co*) for the applicant.
Azad Bashir (*Bashir & Co*) for the respondent.

Cur Adv Vult

Suriyadi J: This is a running-down case pursuant to a judgment in favour of the plaintiff for the sum of RM9,150, emanating from the sessions court. The original claim was over RM27,000. Being dissatisfied with that decision, only the defendant ('the appellant') filed a notice of appeal. Down below, the court had adjudged the plaintiff $^2/_3$ liable whilst the defendant $^1/_3$. The notice of appeal reads thus:

> Ambil Perhatian bahawa Lein Tiam Hock, perayu yang dinamakan di atas tidak berpuas hati dengan keputusan Hakim Mahkamah Sesyen Tuan Rajendran Nayagam yang diberikan pada 6 Mac 1998 dan dengan ini merayu kepada Mahkamah Tinggi terhadap keseluruhan keputusan tersebut terhadap isu liabiliti dan kuantum.
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> *Translation*
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> Take Note that Lein Tiam Hock, the abovenamed appellant is not satisfied with the decision of the Sessions Court Judge Tuan Rajendran Nayagam delivered on 6 March 1998 and therefore appeals to the High Court on the judgment on liability and quantum.

Before the case commenced, the plaintiff ('the respondent'), posed a preliminary objection on the premise that no appeal should be entertained due to legal impediments. The reason supplied was that the amount in dispute or the value of the subject-matter at hand did not exceed RM10,000, nor was there any question of law to be resolved by the court. The foundation of this objection is s 28 of the Courts of Judicature Act 1964, and it reads:

> (1) Subject to any other written law, no appeal shall lie to the High Court from a decision of a subordinate court in any civil cause or matter where the amount in dispute or the value of the subject-matter is ten thousand ringgit or less except on a question of law.

Approaching this provision from a different perspective, an appeal to the High Court, in brief, shall be entertained only if :

(i) a decision has been pronounced by a subordinate court;
(ii) that decision relates to a civil cause or matter; and
(iii) the amount in dispute or the value of the subject-matter is over RM10,000; or
(iv) there is a question of law to be resolved.

As gauged from the above notice of appeal, the matter under appeal was limited to the issue of liability and quantum. In the event I decide that the

disputed amount, or value of the subject-matter is not over RM10,000, that notice procedurally is flawed. This is so as it is silent as to the question of law to be resolved (*Zain Azahari bin Zainal Abidin lwn Wearne Brothers* (1983) Sdn Bhd [1997] 5 MLJ 39; *Sulaiman bin Mohamad v Malayan Banking Bhd* [1992] 2 MLJ 116; *Mohamad Safuan bin Wasidin & Anor v Mohd Ridhuan bin Ahmad (an infant)* [1994] 2 MLJ 187). In open court, the liability issue was mercifully conceded to by the appellant, though not the quantum. The respondent submitted that as the adjudged sum was only RM9,150, an amount which did not exceed the RM10,000, the appeal was incompetent. The appellant on the other hand ventilated that the court should not view the judgment sum to be the disputed amount but the RM27,000, as claimed by the respondent. To resolve the supposed ambiguity of s 28, I find it necessary to discuss s 68 of the Courts of Judicature Act 1964 referred to by both parties. I also find it necessary to refer to relevant cases which may be traced all the way back to England. I begin with the case of *Smith v Gill* [1896] 2 QB 166. The relevant provision under discussion there was s 120 of the County Courts Act which provided that no right of appeal without leave was permitted if the debt or damage claimed did not exceed £20. As it were, the above provision was related to matters 'claimed'. Factually, the sum claimed by the plaintiff was £3 11s and 3p. Eventhough this sum did not exceed the statutory £20, the appeal was proceeded with as the court took into consideration the sums counter claimed by the defendant. By this course of action, the gross sum exceeded £20. In the case of *Brett v Thrower* [1945] 2 All ER 284, the same approach was undertaken by MacKinnon LJ. The appeal was dismissed there as the combined claims of both parties did not exceed £20, as provided for under s 105 of the County Courts Act 1934.

Nearer home, the earliest of cases available for my consideration is *Chan Kee Beng v Ramasamy Naidu* [1939] MLJ 113. In that case Mills J had to contend with s 17 of the Courts Enactment 1918, which reads (at p 114):

> No appeal shall be brought to the court of appeal in any of the following cases :
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> (a) where the amount or value of the subject-matter of the suit is less than five hundred dollars.

Mills J when construing the above provision, read together with the facts before him, ruled that the determining factor was not the amount or value of the subject matter of the appeal, but the amount or value of the subject matter of the civil suit. Interestingly enough, the above provision, apart from the value of the subject-matter and the promulgation of the word 'suit', had no substantial dissimilarity with s 68 of the current Courts of Judicature Act. Progressing further, and after making the necessary comparisons, regretfully I found no similarity between the above s 17 of the Courts Enactment 1918 and s 28 of the Courts of Judicature Act 1964. On hindsight, if the phrase 'of the suit' under the above s 17 of the Enactment were absent, the view of Mills J would certainly be of tremendous assistance to me for purposes of my research.

Section 68 of the Courts of Judicature Act 1964, which did not escape the attention of the antagonists during the hearing reads:

A (1) No appeal shall be brought to the Court of Appeal in any of the following cases:

(a) when the amount or value of the subject-matter of the claim (exclusive of interest) is less than two hundred and fifty thousand ringgit, except with the leave of the Court of Appeal; ... .

B The Federal Court when discussing the above section in *Yai Yen Hon v Teng Ah Kok & Sim Huat Sdn Bhd & Anor* [1997] 1 MLJ 136, encountered no difficulty in concluding that the appeal at hand would still be allowed even if the judgment sum were less than RM100,000 (the sum at the material time prior to the amendment). But this was dependant on a particular reason. Chong Siew Fai CJ (Sabah & Sarawak) supplied the C reason. His Lordship said (at p 140G–H):

> In my view no leave of court was required for this particular appeal. Section 68(1)(a) of the Act used the phrase 'amount or value of the subject-matter of the claim'. The phrase must be read as a whole. In the instant case under appeal, the subject-matter is the road traffic accident and the claim of the first D plaintiff/appellant is for an amount far in excess of RM100,000. That being so, the amount adjudged at the trial assumes little or no significance.

Another case which is relevant for consideration is the case of *Monohary Teresa & Anor v Tan Ah Lek* [1995] 3 MLJ 365. In this case the defendant appellant, erronously thought that leave was required in the circumstances E of the case, as the judgment sum was below RM250,000 (after amendment by Act A887). He thenceforth filed a motion for that purpose, and due to that time consuming act, time for his appeal expired. He thereafter applied for an extention of time. Again the Court of Appeal held that leave to appeal was not required inspite of the award being below RM250,000. And again the decision was based on the sum claimed rather than on the judgment F sum. Since we are on the subject of 'decision', it is worthwhile to note at the earliest of stages that that word is absent in s 68(1)(a). Instead, it contains the word 'claim'. Adverting back to this case, in the ensuing judgment, His Lordship Mahadev Shankar JCA took time off to criticize the imprecise words of s 68. On the pretext of the excusable mistake, an extension of time to file the appeal was allowed.

G I am satisfied that the immediate five cases discussed above are inapplicable to the scenario as envisaged by s 28, as they are easily distinguishable. This provision is plain and clear. To use the words of Mohamed Azmi SCJ in the case of *Tan Weng Chiang v PP* [1992] 2 MLJ 625 at p 630F:

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> Where the meaning of words in the statute is plain and unambiguous, judges should not invent fancy ambiguities.

Pursuing the tenets of interpretation, I am satisfied that the amount in dispute, or the subject-matter provided for under s 28, must relate to the decision of the subordinate court, and not to any sum claimed either by the I plaintiff or the combined sum of the claim and counterclaim submitted by the defendant, if any. Apart from attaching weight or significance to that term 'decision', the provision of s 28 must also be read as a whole.

Indisputably, it is also beyond denial that the latter provision does not have the terms of 'claim' or 'suit', as promulgated in the material provisions discussed in the above cases. If Parliament had wanted to treat ss 28 and 68(1)(a) of the Courts of Judicature Act 1964 in similar fashion, it certainly would not have hesitated to do so. Synchronization is no insurmountable obstacle for the legislators.

Had it been the respondent (plaintiff in this case) who was unhappy with the judgment sum, and had filed a notice of appeal, he similarly would be subject to the same interpretation. If the judgment sum did not exceed RM10,000, then similarly his hypothetical appeal would be disallowed unless a question of law existed to be resolved by the High Court. To allude to the often quoted cliche, sauce for the goose is also sauce for the gander.

Conclusion

To qualify to appeal to the High Court an appellant thus must prove that:

(1) a decision has already been pronounced. A claim in a statement of claim yet to be adjudged, certainly does not qualify as a decision;

(2) if the appeal is pursuant to an amount, the amount in dispute or the subject-matter concerned must be valued at over RM10,000. Generally any dispute would require at least two opposing parties. A plaintiff will invariably claim the exact sum or a potentially larger sum than he could possibly claim. If an award is pronounced and no appeal is filed by that plaintiff, then in principle he has not been prejudiced by it. In real terms it also means that he has abandoned the original claim, thus making it a dead issue. The dissatisfied party in that hypothetical scenario, inevitably the defendant, believing that he has been unfairly or wrongly judged will, in the normal course of event file the necessary appeal. His act will be founded on the belief that he will be injured by that order, a predicament which may be alleviated or relieved by a successful appeal. In practical terms when an aggrieved party files an appeal he must be disputing the judgment sum awarded against him. Therefore, shorn of all the legal niceties, that judgment sum must be the amount in dispute (*Allan & Ors v Pratt* (1888) 13 App Cas 780; *Meghji Lakhamshi & Brothers v Furniture Workshop* [1954] AC 81; *Amer Mohideen Dawood v Sneh Bhar w/o Ter Binder Singh* [1996] 2 MLJ 329).

To strengthen my contention that the amount in dispute or value of the subject-matter must relate to the award, and not that of the claim, some assistance may be garnered from s 29 of the Courts of Judicature Act 1964. Under this provision all civil appeals from a subordinate court shall be by way of re-hearing. On the assumption that the disputed sum were to be the sum claimed by the plaintiff, then the defendant/appellant's interest may be highly prejudiced. This is so as the appeal court will necessarily have to consider the ceiling sum of RM27,000, as submitted in the statement of claim. No appellant/defendant would want that. Surely that was not his

A expectation when commencing the appeal. He must have had in mind a sum less than RM9,150, but surely not to be penalized by an award that could potentially touch RM27,000. Such a scenario will inevitably dissuade any aggrieved party to file an appeal. On the other hand if the disputed sum or subject-matter were to be the amount awarded by the court, then in the event of a partial success, that B judgment sum could proportionately be reduced. Even if the appeal were to be dismissed, his previous position will not turn for the worse, as he will not be penalized by having to pay more than that original award of RM9,150.

If I may be permitted to take a step further, not being a claimant, C the appellant/defendant also does not possess the legal right of reverting to the original sum in the statement of claim. He just cannot freely borrow or clothe himself with the claim of the plaintiff as he is not the party in possession of that right of cause of action. Similarly he cannot impose that claimed sum on the respondent as he already is quite satisfied with the shrunken judgment sum;

D (3) alternatively, the 'subject-matter' under appeal is valued at over RM10,000. In the normal course of event, a subject-matter, which is a thing for consideration, will be in the like of a claim as against the other (as in the right of divorce, of ejectment, recovery of money or foreclosure). In this case the subject-matter is that RM9,150 assessed E by the judge, as per the decision (*Studham v Stanbridge* [1895] 1 QB 870). Even under this alternative situation the appeal fails.

I therefore allow the preliminary objection and strike out this appeal with costs for want of competency.

Preliminary objection allowed.

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Reported by Jafisah Jaafar

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